

# HOUSE BILL No. 1217

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-2-13.

**Synopsis:** Living wage for state agency contracts. Requires a contracting vendor awarded a contract by a state agency, the general assembly, or the judiciary to pay its employees at not less than a certain rate (referred to as the "living wage") beginning July 1, 2007. Sets the living wage at \$9.43 per hour initially, and provides for annual adjustments of the living wage amounts. Provides certain penalties for noncompliance with the requirement to pay the living wage. Establishes the living wage advisory committee to review and evaluate the effectiveness of the living wage in creating and retaining living wage jobs.

**Effective:** July 1, 2007.

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January 11, 2007, read first time and referred to Committee on Labor and Employment.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1217

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-2-13 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2007]:

4 **Chapter 13. Living Wage for State Contracted Employees**

5 **Sec. 1. The following definitions apply throughout this chapter:**

6 (1) "Contracting agency" means any of the following:

7 (A) A state agency (as defined in IC 4-13-1-1(b)).

8 (B) The general assembly.

9 (C) The judiciary.

10 **The term does not include a state educational institution (as**  
11 **defined in IC 20-12-0.5-1).**

12 (2) "Covered employee" means an individual who:

13 (A) is employed by a covered vendor; and

14 (B) directly expends or would directly expend the  
15 individual's time on a service contract with a contracting  
16 agency or on a service subcontract.

17 (3) "Covered vendor" means:

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- 1 (A) a for-profit employer that employs at least twenty-five  
 2 (25) full-time equivalent employees; or  
 3 (B) a nonprofit employer that employs at least one hundred  
 4 (100) full-time equivalent employees;  
 5 and that is awarded a service contract or service subcontract  
 6 after July 1, 2007.  
 7 (4) "Department" refers to the department of labor.  
 8 (5) "Federal income poverty level" has the meaning set forth  
 9 in IC 5-28-18-1.  
 10 (6) "Full-time" means at least forty (40) hours of employment  
 11 in a week.  
 12 (7) "Full-time equivalent employee", for purposes of  
 13 subdivision (3), means the number of employee work hours  
 14 that equal one (1) full-time employment position, regardless  
 15 of whether those hours are worked by one (1) employee or by  
 16 more than one (1) employee.  
 17 (8) "Inmate" has the meaning set forth in IC 11-8-4-2.  
 18 (9) "Institution" has the meaning set forth in IC 11-8-4-2.  
 19 (10) "Living wage" means the rate established under section  
 20 4 of this chapter as the minimum hourly wage rate that must  
 21 be paid to a covered employee by a covered vendor.  
 22 (11) "Person" has the meaning set forth in IC 1-1-4-5(17) and  
 23 includes an agent, an employee, and a representative of a  
 24 person.  
 25 (12) "Service contract" means a single contract that is  
 26 awarded to a covered vendor by a contracting agency and  
 27 that provides for compensation of at least one hundred  
 28 thousand dollars (\$100,000) for the furnishing of services.  
 29 (13) "Service subcontract" means a subcontract that is  
 30 awarded to a covered vendor and that provides for the  
 31 payment of at least twenty-five thousand dollars (\$25,000) in  
 32 funds from the service contract.  
 33 (14) "Vendor agreement" means a written agreement that is  
 34 entered into by the state, through a contracting agency, and  
 35 a covered vendor, and that is executed at the time a service  
 36 contract with the state or a subcontract with a covered vendor  
 37 is signed.  
 38 Sec. 2. (a) Except as provided in subsection (b), this chapter  
 39 applies to all covered vendors.  
 40 (b) Covered vendors entering into the following types of service  
 41 contracts and service subcontracts are exempt from this chapter:  
 42 (1) A construction contract awarded by the state that is

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subject to the common construction wage (as defined in IC 5-16-7-4).

(2) A contract awarded to work-study or cooperative educational programs, if the contract is for a stipend to a student in the program.

(3) A contract awarded by the department of correction, if contracted employees are inmates of institutions.

(4) A contract awarded by the department of education, if contracted employees are paid a stipend for proctoring, grading, supervising, or recording examinations.

(5) Contracts awarded to vendors that provide:

(A) services to the state; and

(B) a stipend or wage to trainees as part of a job training program, if the trainees do not replace current state funded positions.

(c) For a prospective covered vendor to be granted an exemption by the department from the requirements of this chapter, the prospective covered vendor must submit an affidavit to the department and to the contracting agency that:

(1) is on a form approved by the department and provided by the contracting agency;

(2) is signed by a principal officer of the prospective covered vendor; and

(3) states that at least one (1) of the exemptions in subsection (b) applies to the prospective covered vendor.

(d) The department may grant general exemptions if the application of this chapter to a particular service contract or subcontract would violate a specific state or federal statute, rule, regulation, or constitutional provision. All requests submitted by a prospective covered vendor for a general exemption must include the following:

(1) The service contract or subcontract to which this chapter would otherwise apply.

(2) The conflicting statutory, regulatory, or constitutional provision that makes compliance with this chapter unlawful, and a copy of each provision.

(3) An explanation of:

(A) why compliance with this chapter would violate the cited provision; and

(B) the consequences that would result if the violation would occur.

A general exemption request shall be submitted directly to the

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department, and a copy of the request shall be submitted to the contracting agency.

(e) A contracting agency shall monitor and, when considered necessary, recommend to the department individual or group exemptions in cases where compliance with this chapter would cause undue economic hardship to a covered vendor. An exemption under this subsection is subject to the department's approval after a public hearing in compliance with IC 5-14-1.5 on the exemption request has been held. A hardship exemption request must include the following:

- (1) The service contract or service subcontract to which this chapter applies.
- (2) The lower wage to be paid by the covered vendor.
- (3) A detailed explanation of how the payment of a living wage would cause undue economic hardship to the covered vendor, including supporting financial statements.

Sec. 3. A contracting agency engaged in the awarding of contracts shall provide an explanation in writing, in a form prepared by the department, of the requirements of this chapter in all requests for bids for service contracts with the state. A person who signs a service contract with the state shall forward a copy of the requirements to a person submitting a bid for a subcontract on the service contract.

Sec. 4. (a) A covered vendor shall pay not less than the living wage to covered employees.

(b) The living wage shall be:

- (1) calculated on an hourly basis; and
- (2) after June 30, 2007, at least nine dollars and forty-three cents (\$9.43).

Before July 1 of each year after 2007, the department shall recalculate the living wage according to subsection (c).

(c) The department shall recalculate the living wage before July 1 of each year after 2007 to equal the highest of the following:

- (1) The hourly rate that, at forty (40) hours of work a week for fifty-two (52) weeks a year, would equal the federal income poverty level for a family of four (4) individuals.
- (2) The living wage in effect before the recalculation under this subsection, adjusted in proportion to the increase, as of the immediately preceding December 31 over the year earlier level, of the annual average Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor.

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(3) Adjustment to one hundred ten percent (110%) of the federal minimum wage in effect at the time of the recalculation under this subsection.

**Sec. 5. (a) A covered vendor has the following duties:**

(1) With respect to maintenance of payroll records, a covered vendor shall maintain payrolls of each covered employee and related basic records for a period of three (3) years. The records must include:

(A) the name and address of each employee;

(B) each employee's job title and classification;

(C) the number of hours worked each day by each employee;

(D) each employee's:

(i) gross wages;

(ii) deductions made; and

(iii) actual wages paid;

(E) a record of fringe benefit payments, including:

(i) contributions to approved plans, funds, or programs;

(ii) additional cash payments; or

(iii) both amounts under items (i) and (ii); and

(F) any other data that may be required by the contracting agency from time to time.

(2) With respect to examination of payrolls, a covered vendor shall permit a representative of the department to:

(A) observe work being performed upon the work site;

(B) interview employees; and

(C) examine the books and records relating to the payrolls being investigated.

(3) Before July 31 of each year, a covered vendor shall provide an annual report to the department of the employment activities of the covered vendor, including the job positions charged to the contract and the wage ranges of those positions.

(b) With respect to vendor agreements, at the time of signing of a service contract with a contracting agency or a service subcontract with a vendor, the contract with the covered vendor must include the following:

(1) The name of the program or project under which the contract or subcontract is being awarded.

(2) The name, address, and phone number of a local contact representing the covered vendor.

(3) A written commitment by a representative of the covered

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1 vendor to:

2 (A) pay all covered employees not less than the living wage,  
3 subject to adjustment each July 1; and

4 (B) comply with this chapter.

5 (4) A workforce profile of covered employees paid for by the  
6 service contract or subcontract, including the employees' job  
7 titles with wage ranges.

8 (5) For service contracts, a list of all service subcontracts  
9 either awarded or that will be awarded to vendors with funds  
10 from the service contract. A covered vendor awarded a  
11 service contract shall notify the contracting agency within  
12 three (3) working days after signing the service subcontract.

13 Sec. 6. (a) If considered necessary for the enforcement of this  
14 chapter, the department may issue subpoenas to compel the:

15 (1) attendance and testimony of witnesses; and

16 (2) production of books, papers, records, and documents  
17 relating to payroll records necessary for hearings,  
18 investigations, and proceedings.

19 The department may apply to the circuit or superior court in the  
20 county where the subpoena is to be served to enforce the subpoena.

21 (b) An individual who is:

22 (1) a covered employee; or

23 (2) an applicant for a position to be filled by a covered  
24 employee;

25 and believes that the employer is not complying with the  
26 requirements of this chapter may file a complaint with the  
27 department. Complaints by covered employees of alleged violations  
28 may be made under this section at any time. Written or oral  
29 statements made by an individual are confidential and may not be  
30 disclosed to the covered vendor without the consent of the  
31 individual. The department shall provide a copy of the complaint  
32 to each covered vendor against whom a complaint is made within  
33 five (5) business days after the complaint is filed.

34 (c) If a covered vendor discharges, reduces the compensation of,  
35 or discriminates against any covered employee or another  
36 individual for:

37 (1) making a complaint to the department or otherwise  
38 asserting the individual's rights under this chapter;

39 (2) participating in any proceedings under this chapter; or

40 (3) using any civil remedies to enforce the individual's rights  
41 under this chapter;

42 the covered vendor is in violation of this chapter. The department

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shall investigate an allegation of retaliation or discrimination described in this subsection. If the allegation is found to be true, the department shall order appropriate relief to the employee or individual and assess penalties against the covered vendor, which may include suspension of the covered vendor's contract or ordering the service contractor to suspend the covered vendor's subcontract.

(d) The department or its designees shall investigate each complaint of noncompliance. Investigations may include routine reviews, spot checks, and investigations following complaints. The department shall examine all payrolls promptly for compliance upon receiving a complaint in furtherance of an investigation.

**Sec. 7. (a) If the department determines after investigation that a covered vendor has failed to pay the living wage rate or has otherwise violated this chapter, the department may impose any or all of the following penalties or remedies on the covered vendor:**

- (1) A civil penalty not to exceed three hundred dollars (\$300) for each affected covered employee for each day that the covered vendor is in violation of this chapter.
- (2) The filing of a complaint with the pertinent federal agency.
- (3) Wage restitution for each affected employee.
- (4) Suspension of ongoing contract and subcontract payments.
- (5) Ineligibility to bid for future contracts.
- (6) Any other action considered appropriate by the department.

(b) A person on whom a penalty has been imposed by the department under subsection (a) may request a hearing before the department under IC 4-21.5-3.

(c) Judicial review of an adverse decision in a hearing held under this section shall be in accordance with IC 4-21.5-5.

(d) A remedy set forth in this chapter is not intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right granted under this chapter in a court of law. This chapter may not be construed to limit an employee's right to bring a common law action for wrongful termination.

**Sec. 8. A covered vendor shall inform its covered employees earning less than twelve dollars (\$12) an hour, or any other amount as determined by the department, of their possible right to apply for and receive the federal earned income tax credit. The department shall assist covered vendors with implementation of this section.**

**SECTION 2. [EFFECTIVE JULY 1, 2007] (a) As used in this**

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1 SECTION, "committee" means the living wage advisory  
2 committee established by this SECTION.

3 (b) As used in this SECTION, "department" means the  
4 department of labor created by IC 22-1-1-1.

5 (c) There is established the living wage advisory committee. The  
6 committee shall:

7 (1) review and evaluate the effectiveness of IC 22-2-13, as  
8 added by this act, in creating and retaining living wage jobs  
9 in Indiana;

10 (2) review and evaluate the implementation and enforcement  
11 of IC 22-2-13, as added by this act; and

12 (3) submit to the legislative council and to the governor:

13 (A) a preliminary report not later than December 1, 2007;

14 (B) an annual report not later than December 1, 2008;

15 (C) an annual report not later than December 1, 2009; and

16 (D) a final report not later than December 1, 2010, which  
17 must include recommendations and including specific  
18 findings as to how the living wage law has affected  
19 Indiana's economy.

20 The report to the legislative council must be in an electronic  
21 format under IC 5-14-6.

22 (d) The governor shall appoint five (5) members to the  
23 committee as follows:

24 (1) One (1) member representing a labor union.

25 (2) One (1) member representing a living wage advocacy  
26 organization.

27 (3) One (1) member representing a community based  
28 organization operating solely within Indiana.

29 (4) One (1) member representing the Indiana Chamber of  
30 Commerce.

31 (5) One (1) member representing small business in Indiana.

32 (e) The governor may remove a member of the committee at any  
33 time.

34 (f) If a vacancy on the committee occurs, the governor shall  
35 appoint an individual representing the same interest as the prior  
36 member to fill the vacancy.

37 (g) The committee shall elect a chairperson and a secretary  
38 from its members. The affirmative votes of a majority of the voting  
39 members appointed to the committee are required for the  
40 committee to take action on any measure, including preliminary,  
41 annual, and final reports.

42 (h) The committee may study other topics:

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- (1) as assigned by the governor;
- (2) as assigned by the legislative council; or
- (3) as directed by the commission's chairperson.

(i) The department shall provide staff and administrative support for the committee.

(j) Expenses incurred under this chapter shall be paid from funds appropriated to the department.

(k) Each member of the committee who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is also entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(l) Each member of the committee who is a state employee but who is not a member of the general assembly is entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(m) Each member of the commission who is a member of the general assembly is entitled to receive the same per diem, mileage, and travel allowances paid to legislative members of interim study committees established by the legislative council. Per diem, mileage, and travel allowances paid under this subsection shall be paid from appropriations made to the legislative council or the legislative services agency.

(n) The committee shall meet at least quarterly.

(o) This SECTION expires July 1, 2011.

SECTION 3. [EFFECTIVE JULY 1, 2007] (a) Notwithstanding IC 22-2-13-5(a)(3), as added by this act, a covered vendor is not required to provide an annual report by July 31, 2007, to the department of labor concerning the employment activities of the covered vendor.

(b) A covered vendor is required under IC 22-2-13-5(a)(3), as added by this act, to provide an annual report to the department of labor of the employment activities of the covered vendor before July 31, 2008. The report must cover the period beginning with the first date of the contract through the date of the submission of the annual report to the department of labor.

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1 (c) This SECTION expires December 31, 2008.

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